

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

2016 JUN 28 A 10:55

MICHELLE H., by her next friend Tamara)
Coppinger, **AVA R.**, by her next friend Tamara)
Coppinger, **ZAHARA L.**, by her next friend)
Deborah Wilson, **SAMMY V.**, by his next)
friend Aleksandra Chauhan, **ANDREW R.**, by)
his next friend Cheryl Kreider, **MARCUS,**)
ANNIE, CAMERON, SARA, and ROGER)
B., by their next friend Margaret Wilson, and)
KYLE S., by his next friend Tamara Coppinger,)

Individually, and on behalf of all other)
similarly situated children.)

Plaintiffs,)

v.)

C/A No. 2:15-cv-00134-RMG

NIKKI HALEY, in her official capacity as)
Governor of the State of South Carolina, and)

SUSAN ALFORD, in her official capacity as)
Acting State Director of the South Carolina)
Department of Social Services.)

Defendants.)

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT,
SETTING HEARING FOR FINAL APPROVAL, AND
DIRECTING NOTICE TO THE CLASS**

This matter came before the Court on the parties' Joint Motion for Preliminary Approval of Class Action Settlement Agreement, Setting Hearing for Final Approval, and Directing Notice to the Class ("Joint Motion"), requesting this Court's preliminary approval of a settlement agreement reached between the parties to this class action (the proposed "Settlement Agreement"), in the above-captioned class action lawsuit. The Court has preliminarily reviewed and evaluated the proposed Settlement Agreement among the Plaintiff Class and Defendants and finds that it

appears to be within the range of reasonableness, adequacy, and fairness. Accordingly, the Joint Motion is **GRANTED**, and the Court orders as follows:

1. ***Class Certification and Preliminary Approval of the Parties' Settlement Agreement.***

The terms of the settlement between the parties are embodied in the proposed Settlement Agreement, filed in conjunction with the Joint Motion. The Court believes that this proposed Settlement Agreement is worthy of the Class' consideration, which includes all children who are involuntarily placed in DSS foster care in the physical or legal custody of DSS either now or in the future, and orders that notice of this proposed Settlement Agreement should be directed to Class Members, and that a hearing should be conducted to ascertain whether the proposed Settlement Agreement meets the standards required for final approval pursuant to Federal Rule of Civil Procedure 23(e).

The Court also finds that this action satisfies all of the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure. Accordingly, pursuant to Rule 23, the Court certifies this class action for settlement purposes with the Class defined as: all children who are involuntarily placed in DSS foster care in the physical or legal custody of DSS either now or in the future.

2. ***Hearing.*** A hearing shall be held at the Charleston Federal Courthouse, 85 Broad Street, Charleston, South Carolina 29401, at 10 a.m. on October 4, 2016, to consider whether the proposed Settlement Agreement is fair, reasonable, and adequate and should receive the Court's final approval pursuant to Rule 23(e).

- (a) Objections, support, or comments by Class Members, or their legal representatives, regarding the proposed Settlement Agreement will be considered if submitted in writing to: SC Appleseed Legal Justice Center,

Attn: Stephen Suggs, P.O. Box 7187, Columbia, SC 29202, on or before September 5, 2016.

- (b) Class Members, or their legal representatives, who wish to be heard orally in support of or in opposition to the proposed Settlement Agreement at the hearing to be held on October 4, 2016, must submit with their objections, support, or comments, as described in Paragraph (a) above, a written notification of their desire to appear personally and briefly indicate (if in opposition to the settlement) the nature of the objection, before September 5, 2016.
- (c) Counsel for the Class and for Defendants shall be prepared at the hearing to respond to objections filed by Class Members, and to provide other information, as appropriate, bearing on why the Settlement Agreement should be approved.

3. ***Notice to Class Members.*** On or before July 15, 2016, Defendants shall, at their sole expense, take the following steps to notify Class Members of the proposed settlement, as follows:

- (a) Defendants shall prepare and either mail or email¹ a true copy of the Notice of Proposed Class Action Settlement in *Michelle H., et al. v. Haley, et al.*, a copy of which is attached hereto, to the following persons/locations, with an accompanying letter signed by South Carolina Department of Social Services (“DSS”) State Director Susan Alford that gives notice of the settlement and directs that the copy of the Notice of Proposed Class Action

¹ In cases of notice by email in sections 3(a) and 3(b) of this Order, the Department will request confirmation that the email has been received. If the Department has not received a confirmation of receipt within ten (10) days of the email having been sent, then the Department will send notice to that person by regular mail.

Settlement be prominently and immediately posted in the location(s) in which it is most likely to be seen by all children who are involuntarily placed in DSS foster care in the physical or legal custody of DSS, and their legal representatives, and that the Notice shall remain posted until October 4, 2016:

- i) By email to each DSS county office, regional office, and state office;
 - ii) By regular mail to each group home, congregate care placement, institution, and residential treatment facility in which children in DSS custody are placed or may be placed;
 - iii) By regular mail to each agency with which DSS contracts for the provision of foster care services for Class Members and/or the families of Class Members;
 - iv) By email to each juvenile public defender office;
 - v) By email to each office of the Guardian *Ad Litem* program and each office of the Court Appointed Special Advocate (CASA); and
 - vi) By regular mail to each elementary, middle and high school in the state of South Carolina;
 - vii) By regular mail to the Attorney General for the United States and the Attorney General for the State of South Carolina.
- (b) Defendants shall prepare and mail or email a true copy of the Notice of Proposed Class Action Settlement in *Michelle H., et al. v. Haley, et al.*, a copy of which is attached hereto, to the following persons:

- i) By email to each employee of DSS that provides direct case management, supervision, or provides permanency services to a Class Member, or investigates one or more Accepted Reports of Abuse or Neglect about a Class Member;
- ii) To each person who serves as a Guardian *Ad Litem* or Court Appointed Special Advocate (CASA) with respect to any Class Member by sending an email to the individual county offices for the GAL and CASA programs and to Brenda Gorski and Angela Kohel, the attorneys for the GAL and CASA programs. Ms. Gorski and Ms. Kohel will disseminate the notice to the individual GALs and CASA by email and will send a copy by regular mail to any GAL or CASA who does not confirm receipt of the email within 10 days of the email being sent;
- iii) By email to the judges and clerks of each Family Court in the state of South Carolina;
- iv) By regular mail to each person who has been approved, as of the date of this Order, to serve as a foster parent, putative adoptive parent, or legal guardian for Class Members in general or any specific Class Member;
- v) By regular mail to each parent of a Class Member for whom parental rights have not been terminated; and
- vi) By regular mail to each Class Member who has attained the age of fourteen (14) years on or before the date of this Order.

(c) Defendants shall send by first class mail copies of this Order, the Notice to Class Members, and the proposed settlement agreement to any member of the South Carolina public who requests it within five (5) business days of receiving the request.

(d) Defendants shall prominently post the Notice of Proposed Class Action Settlement and the Settlement Agreement on the DSS Web site, and shall maintain that posting until October 4, 2016.

(e) On or before September 5, 2016, Defendants will supply Class Counsel with an alphabetical list (including name, age and all available contact information) of all persons who, according to Defendants' records, appear to be current Class Members.

(f) Counsel will share any written submission from Class Members, or interested parties, with the opposing party within five (5) days of receipt. Counsel will also submit to the Court all written submissions received from Class Members, or interested parties, and any written responses to such submissions, on or before September 19, 2016.

5. Counsel for parties shall work cooperatively to maximize communication of the Notice of Proposed Class Action Settlement to Class Members and their legal representatives.

6. Defendants will file with the Court, on or before July 15, 2016, an affidavit certifying compliance with the notice requirements of this Order.

AND IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read 'R. M. Gergel', is written over a horizontal line.

THE HONORABLE RICHARD M. GERGEL
U.S. DISTRICT JUDGE

Dated: *June 28, 2016*